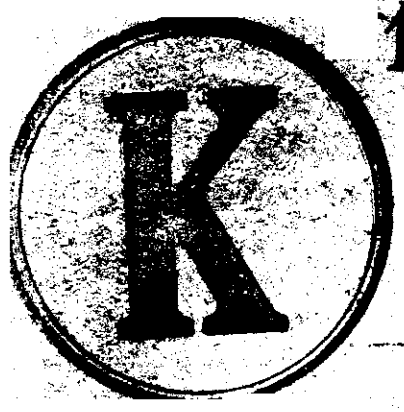

1951

File No. O. L. A
Loans 151
Legal Department
A **BRANCH**

Subject:—

Opinions under the

Bombay Local Authorities

Loans Act, 1914.

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C O N T E N T S.

Legal Department File No. O. L.A. Loans / 51.

Sr.No.	R.L./O.No.	Subject	Pages.
		Opinions under the Bombay Local Authorities Loans Act, 1914.	
1	2416 8/2/1951.	Bombay Local Authorities Loans Rules, 1923 - rule 7. Publication of application in the Bombay Government Gazette.	1-2
2	7355 9/5/1951.	Karad Municipality Grant of permission to raise loan for its water supply scheme.	3-6
3	10728 9/7/1951.	Whether a loan can be sanctioned retrospectively.	7-8
4	16229 13/10/1951.	Whether all loans that were granted to the Dohad Municipality for the purchase of a truck in connection with the town compost scheme before issue of G.R.No. 6312 d. 22/2/1951 should be regularised on only those loans which have not still been repaid completely are to be regularised.	9-12
5	18445 19/11/1951.	Part payment of loan -- Ahmedabad Municipality.	13-16
6	19748 22/11/1951.	Umreth Municipality raising of loan by.	17-20

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Bom.Local Authorities Loans Rules, 1923 Rule 7.

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R.L.A's opinion No. 14747 dated 24.10.50.

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Publication of application in the Bombay Government Gazette.

Rule 8 A of the Bombay Local Authorities Loans Rules, 1923, provides for power of Government to dispense with publication of the application under Rule 7 if Government is satisfied that the loan is urgently needed for any of the purpose mentioned in clauses (ii),(iii) and (iv) of sub-section (1) of section 3 of the Local Authorities Loans Act, 1914. These clauses relate to the giving of relief and the establishment and maintenance of relief works in times of famine or scarcity, the prevention of the outbreak or spread of any dangerous epidemic disease or any measures which may be connected with or ancillary to any of the aforesaid purpose. The loan proposed to be granted to the municipalities is in connection with the town compost scheme which scheme would not appear to be relating to any of the purposes mentioned in clause (ii),(iii) or (iv) of section 3 (1). Consequently, it would not be competent for Government to dispense with the publication of applications for such loans under Rule 7. In the case of loans which have been already granted without complying with the provisions of the Rules, there is no point in publishing the loan applications which the R.L.A. advised to obtain from the local authorities just to regularies the position. In respect of these loans the publications of applications under Rule 7 may therefore be dispensed with. But in respect of applications which will hereafter be received for loans, it would not be proper to dispense with the publication under Rule 7. R.L.S.'s opinion

R.L.A.'s opinion No. 14747 dated 24th October 1950 did not contemplate that the publication of application under Rule 7 should be dispensed with.

Id/-(J.R.D.)

Additional Secretary to Government.

U.R. to A& F.D.No.2416,dated the 8th Fubruary 1951.

R.D.P.
4/7/56

S.C.

L.D.R.I.No.6308, dt. 30-3-51.

Submitted with ref. to the note of the L.S.G. & P.H.Deptt: at p. 41-44 ante.

The facts of the case may be briefly stated as under:-

In 1948, the Karad Muny, was permitted to raise a loan of Rs. 279000/- at 4% P.A. in two instalments for the duration of 30 years in the open market for its water supply scheme. The Muny. was able to raise the First instalment of the loan of Rs. 150000/- in the 1st attempt, but could not succeed in raising the second instalment of Rs. 1,29,000/- by Novr. 1949. The Muny. was, therefore, allowed an extension of time upto the 1st of Octr. 1950 for the purpose. If failed to raise the 2nd instalment loan even within the extended time. The Muny. has accordingly requested the Govt. that it may be given a further extension of time and that it may be allowed to raise it at 4½% P.A.

It is proposed to inform the Muny. that under the present money market conditions it is not likely that a loan of 30 yrs. duration will attract subscribers at 4% P.A., and that it should try to shorten the period of repayment say to 15yrs. or so though Govt. would have no objection to the loan duration of 30yrs Govt. has also no objection to the Muny. raising the loan at 4½% P.A. However, an increase in the rate of interest and a reduction in the period of repayment will increase the annual burden of the Muny.

In the circumstances of this case, the following question have been referred to

R.L.A. for his opinion.

(1) Whether the previous sanction to the loan application should not be considered to have lapsed and the Muny. now asked to make a new application?

(2) Whether it would be necessary to publish the application in the B.G.G. in view of the fact that an extension of time is to be granted.

R.D.P.
4/7/56

S.C.

Legal Department.

The view taken by the Local Self Government and Public Health Department is correct. A Fresh loan on different terms may be sanctioned on an application being made by the Municipality.

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D., No. 7335,
dated the 9th May 1951.

R.D.P.
4/7/56

S.C.

Legal Department.

Strictly speaking a loan cannot be sanctioned retrospectively. Since however the loan was advanced long ago, to regularise the position the loan may be sanctioned restrospectively. Such irregularity should in future be avoided (See R.L.A's opinion No.14747, dated 24-10-1950).

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D., No. 10793,
dated the 9th July 1951.

R.D.P.
4/7/56

S.C.

L.D.R.I.No.19378, dt. 18.9.51.

A loan of Rs. 10000/- was sanctioned for Dohad Muny. by Govt. Resolution No.252 Agril. and Rural Development Deptt. dated 14.1.49 for the purchase of a truck in connection with the town compost scheme. It was subsequently decided by Govt. that all loans to Municipalities in connection with the town compost scheme should be granted under the Local Authorities Laws Act, 1914 and the Local Authorities Rules 1923 and Orders to this effect were issued on 22.2.51 in G.R.No.6312 dt.22.2.51 para 4 of this G.R. requires that all loans granted to Municipalities previously are to be regularised in accordance with the revised procedure stated therein. The Collector of Panch Mahals has forwarded the formal loan application from the President Dohad Municipality for re-sanctioning reatrospectively the loan already granted. In the previous opinion No.2416 dated 8.2.51. (In file O.L.A.Loans/51 slip A below) the R.L.A. has advised that it is not a necessary to publish in the B.G.G. under rule 7 of the Local Authorities Loans Rules 1923, the formal applications received from the Municipalities for regularising the loans already granted. This Dohad Municipality has already repaid the loan of Rs.10,000/- by two instalments of Rs.2215/- and Rs-8270-11-0 on 6.2.50 and 14.9.50 respectively. The papers have been sent to the R.L.A. with a request to advise whether all loans that were granted before the issue of G.R.No.6312 dt.22.2.51 should be regularised or only those loans which have not still been repaid completely are to be regularised.

The F.D. is of the view that the loan of Rs.10000/- granted to the Dohad Municipality has already been completely adjusted and therefore there does not appear to be any necessity of regularising the sanction to that loan at this stage.

R.D.P.
4/7/56
S.C.

Legal Department.

Seen and returned.

The view taken by the Finance Department is correct.

Id/-

Additional Secretary to Government.

U.R. to F.D.M9.16229,dated the 13th October 1951.

R.D.P.
4/7/86

S.C.

Office of the R.L.A.

Part Payment of loan Ahmedabad Municipality.

Bom.Local Authorities Loans Act, 1914 and Rules made thereunder.

By Government Resolution, General Department No.1628/33 dated 14th December 1937 Government sanctioned the raising of a loan of Rs.25 lakhs by the Ahmedabad Municipality in the open market on the terms and conditions specified in its application published in Government Notification No.1628/33 dated 21st September 1937, subject to the following modifications, namely:-

(1) The first instalment of Rs.8 lakhs may be raised on any date upto 31st December 1937 and

(2) the issue price of the loan shall not be below par.

Condition 2(g) of the conditions specified in the application published in Government Notification as stated above states:

"The terms for which the money is to be borrowed is thirty years with option to the Municipality to repay the amount after ten years from the date of raising the loan by giving three months' previous notice. The Municipality will provide a sinking fund from the general revenues which will be invested in accordance with the rules. The rate of interest at which the improvement of the sinking fund has been calculated is 3 per cent. per annum."

It appears that the Municipality on 4th March 1948 repaid a loan held by the public to the extent of Rs.1,30,500 after withdrawing that amount from the sinking fund. The Examiner, Local Fund Accounts, has objected to this part payment on the ground that the said condition 2(g) does not authorise the Municipality either to pay the loan in part or to withdraw the sinking fund without specific approval of Government. The Ahmedabad Municipal Corporation has now approached Government to accord sanction to the reduction in the part payment of the loan and for consequent sinking fund instalment. The Corporation has in the meantime made good

the deficit in the sinking fund. The questions raised for the R.L.A.'s consideration are:-

(1) whether partial repayment of the loan is authorised by condition 2(g);and

(2) if not, whether it would be necessary to alter condition 2(g) or whether it would suffice if the irregularity committed by the Corporation is condoned as suggested by the Examiner, Local Fund Accounts.

Neither the Local Authorities Loans Act, 1914, nor the Rules made thereunder contain any express provision prohibiting a local authority from repaying part of a loan. Rule 18 of the Local Authorities Loans Rules, 1923, provides that if the loan is proposed to be paid out of the sinking fund, an amount sufficient x for payment of the loan when it matures should be paid into the sinking fund annually and the local authority is required to make good from its income any amount by which the Accountant General may certify that the fund is deficient for the purpose of the repayment of the loan. Section 116 of the Bombay Provincial Municipal Corporations Act, 1949, which applies to loans raised before the xxxxx appointed day, provides that the provisions of section 112 shall apply to such sinking funds. Section 112(2) provides that the Corporation may apply a sinking fund or any part thereof in or towards the discharge of a loan for which such fund was established and until such loan or part is wholly discharged shall not apply the same for anyother purpose. It is, therefore, apparent that the only prohibition is that the sinking fund cannot be diverted for any purpose other than the x repayment of the loan. It appears from these provisions that it would not be illegal if a local authority repays part of its loan out of the sinking fund

provided such loan has become mature and the deficiency in the sinking fund as a result of such repayment is made up by the Municipality. However, condition 2(g) appears to contemplate ti that the repayment, if the Municipality desires to do after 10 years, should be of the whole loar Consequently, partial repayment of the loan appears to contravene condition 2(g), though it does not appear to be contrary to the provisions of the Act. In view of the fact that partial repayment of the loan involves breach of condition 2(g), it appears necessary that Government should condone the irregularity. However, no alteration of condition 2(g) appears necessary.

& Id/- (J.R.D.)

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No.18443,
dated the 10th November 1951.

R.D.P.
4/7/56

S.C.

OFFICE OF THE R.L.A.

Local Authorities Loans Act and Rules made thereunder.

Umreth Municipality Raising of loan by -

By G.R.,H. & L.G.D.No.2686/33, dated 1st December 1948 Government accorded sanction to the raising by the Umreth Municipality of a loan of Rs.4 lakhs in the open market for financing its water supply scheme on the terms and conditions specified by the Municipality in its application dated the 28th February 1948 and subject to the further conditions specified in the said Government Resolution. Under these conditions the loan was to be raised in two instalments of Rs.2 lakhs each: the first instalment soon after Government sanction and the second within 6 months from the date of the first instalment. The loan was to carry interest at the rate of 3½ per cent. The first instalment was fully subscribed but the second instalment was not subscribed at all. Under G.R.,L.G.S. & P.H.D., dated 25th October 1950 Government allowed the Municipality to raise the second instalment of the loan at 4 per cent. and even then the Municipality could not raise the loan. The Municipality is now allowed to raise the rate of interest to 4½ per cent. and to repay the loan at 5 per cent. annually after a period of 5 years. There being a variation in the rate of interest as well as in the term of repayment, Messrs Manilal Kher Ambalal & Co., Solicitor and Notary Public, have addressed a letter to Government on behalf of the Bombay Mutual Life Assurance Society, Ltd., which proposes to take debentures of the Municipality of the face value of Rs.2 lakhs, proposing that

Government should republish the variations in the terms and conditions of the loan, Under Secretary, L.G.S. & P.H.D., considers that a notification giving reference to the previous loan application and stating the rate of interest in respect of the second instalment of the loan, which has remained unsubscribed, and 5 per cent. repayment of the loan after a period of five years would be sufficient. R.L.A. is requested to advise.

2. The view taken by the Under Secretary, L.G.G. & P.H.D., is not correct. The second instalment of the loan could not be raised within a period of six months as specified in G.R., H. & L.G.D.No.2686/33, dated the 1st December 1948. Consequently the sanction accorded by Government to the raising of the second instalment of loan on the terms and conditions specified therein has lapsed. It would, therefore, be necessary for the Municipality to make a fresh application for sanction of Government to the raising of the loan of Rs.2 lakhs on the new terms and conditions (see Additional Secretary's opinion No.7355, dated 8-5-1951). On making such application by the Municipality, the procedure prescribed in the Bombay Local Authorities Loans Rules may be followed and sanction accorded by Government.

Id/- (J.R.D.)

Remembrancer of Legal Affairs.

U.R. to L.G.G. & P.H.D.No.18742,

dated the 22nd November '51

R.D.P.
4/7/52. S.C.